

PT 05-12

Tax Type: Property Tax

Issue: Charitable Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**FREEPORT REGIONAL
MANAGEMENT SERVICES,
APPLICANT**

v.

**ILLINOIS DEPARTMENT
OF REVENUE**

No.	02-PT-0071 (01-89-0017)
P.I.N:	89-10-12-04-102-001 89-10-12-04-101-006

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Messrs. John B. Whiton and Judd Thruman of Snow, Hunter, Whiton & Fishburn, Ltd., on behalf of Freeport Regional Management Services (the “applicant”); Mr. Shepard Smith, Special Assistant Attorney General, on behalf of the Illinois Department of Revenue (the “Department”).

SYNOPSIS: This matter raises the following issues: (1) whether the applicant qualifies as an “institution of public charity” within the meaning of 35 **ILCS** 200/15-65; and, (2) whether real estate identified by Stephenson County Parcel Index Numbers 89-10-12-04-102-001 and 89-10-12-04-101-006 (hereinafter referred to in the collective as the “subject property”) was “actually and exclusively used for charitable purposes,” as required by 35 **ILCS** 200/15-65, during the 2001 assessment year. The underlying controversy arises as follows:

Applicant filed an Application for Property Tax Exemption with the Stephenson County Board of Review (the “Board”) on November 27, 2001. Dept. Group Ex. No. 2. The Board reviewed this Application and recommended to the Department that the

requested exemption be granted. *Id.* The Department, however, rejected the Board's recommendation by issuing an initial determination, dated August 8, 2002, finding that the subject property is not in exempt ownership and not in exempt use.

Applicant filed an appeal to this determination and later presented evidence at a formal evidentiary hearing, at which the Department also appeared. Following a careful review of the record made at that hearing, I recommend that the Department's initial determination be affirmed.

FINDINGS OF FACT:

A. PRELIMINARY MATTERS

1. The Department's jurisdiction over this matter and its position therein are established by the admission of Dept. Ex. Nos. 1, 2.
2. The Department's position in this matter is that the subject property is not in exempt ownership and not in exempt use. *Id.*
3. The subject property is located in Lena, IL and improved with a 32,000 square foot nursing home facility for the elderly. Dept. Ex. No. 2; Applicant Ex. No. 2.
4. Applicant obtained ownership of the subject property pursuant to warranty deed dated December 21, 2000. Applicant Ex. Nos. 1, 3.

B. APPLICANT'S CORPORATE STRUCTURE

5. Applicant's basic corporate structure is as follows: Freeport Regional Health Care Foundation ("Freeport"), an Illinois Not-For-Profit Corporation qualifying for federal tax exempt status under Section 501(c)(3) of the Internal Revenue Code is the sole member of the applicant, a separately incorporated Illinois Not-For-Profit

Corporation also qualifying for federal tax exempt status under Section 501(c)(3) of the Internal Revenue Code. Applicant Ex. Nos 3, 4, 5, 6, 7, 8.

6. Freeport's Articles of Incorporation and by-laws state, *inter alia*, that it is organized for the following purposes:

- A. To promote and support, directly or indirectly, by donation, loan or otherwise, the interests and purposes of organizations which provide health care, education or research and which fall within the categories of Sections 501(c)(3) and 509(a)(1) or 509(a)(2) of the Internal Revenue Code;
- B. To raise funds for any or all of the organizations described in the preceding paragraph from public and all other available sources;
- C. To receive and maintain such funds and to expend the principal and income therefrom in furtherance of the above-stated purposes;
- D. To own, lease or otherwise deal with all property, real and personal, to be used in furtherance of these purposes;
- E. To contract with other organizations, for-profit and not-for-profit, to be used in furtherance of said purposes;
- F. To otherwise operate for charitable, scientific or educational purposes consistent with Section 501(c)(3) of the Internal Revenue Code.

Applicant Ex. No. 7.

7. Applicant's Articles of Incorporation and by-laws state, *inter alia*, that it is organized for the following purposes:

- A. To operate for charitable, educational and scientific purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code;
- B. To establish, own, operate, maintain and/or conduct the affairs of one or more nursing homes, including any and all facilities, services and programs incidental thereto to promote the general health of the community, provided, however, that in no instance shall the corporation engage in the practice of medicine;
- C. To adopt policies and procedures designed to address the needs of its residents against the financial risks associated with the later years of life, including procedures for waiver or reduction of entrance fees, assignment of assets or fee for services based upon the individual's ability to pay and the financial resources of the corporation;
- D. To own, lease or otherwise deal with all property, real and personal, to be used in furtherance of these purposes;
- E. To contract with other organizations, for profit and not-for-profit, with individuals and with government agencies in furtherance of these purposes;
- F. To provide for the physical, psycho-social, emotional, recreational and other needs of elderly or infirm persons regardless of race, creed, national origin or sex;
- G. To participate in educational activities related to the promotion of health care for the elderly or the infirm; and,

H. To secure, raise and arrange capital to provide for the development, implementation and support of such facilities, programs and services consistent with the purposes of the corporation.

Applicant Ex. Nos. 3, 4.

8. Applicant's by-laws further state, in relevant part, that Freeport shall oversee all of applicant's operations and ensure that all of applicant's operations are consistent with Freeport's corporate purposes, and, that as part of its oversight functions, Freeport shall have exclusive power to do all of the following:

- A. Establish applicant's corporate spending limit;
- B. Establish an investment policy for the applicant;
- C. Select an independent auditor, legal counsel and/or other major consultants for the applicant;
- D. Adopt and amend mission statements and other documents related to applicant's corporate purposes; and,
- E. Appoint, from nominees recommended by the applicant's governing board, and remove, with or without cause, the director's of that board in accordance with procedures for such appointment and removal established in the applicant's by-laws.¹

Applicant Ex. No. 4.

C. APPLICANT'S FINANCIAL STRUCTURE²

1. These procedures have no impact on the outcome of this case.

2. The applicant did not submit any financial documents pertaining to Freeport's financial structure.

9. Applicant's federal return reveals the following information about its financial structure for the period January 1, 2001 through December 31, 2001:

SOURCE	AMOUNT	% OF TOTAL³
REVENUES		
Program Service & Operating Revenues		
Net Patient Service Revenue	\$ 3,111,755.00	94.1%
Other Unspecified Operating Revenues	\$ 188,797.00	5.7%
Total Program Service Revenues	\$ 3,300,552.00	99.8%
Other Revenue Sources		
Interest on Savings & Temporary Cash Investments	\$ 5,206.00	<1%
TOTAL REVENUES	\$ 3,305,758.00	100%
EXPENSES		
Program Expenses		
Compensation of Officers, Directors, Etc.	\$ 0.00	0%
Other Salaries & Wages	\$ 1,514,641.00	50%
Pension Plan Contributions	\$ 11,899.00	<1%
SOURCE	AMOUNT	% OF TOTAL
Program Expenses (Continued)		
Other Employee Benefits	\$ 247,928.00	8%
Payroll Taxes	\$	4%

3. All percentages shown herein are approximations derived by dividing the amounts shown in the relevant category by the total revenues or expenses shown on the relevant line of the second column. Thus, $\$3,111,755.00 / \$3,300,552.00 = 0.9413$ (rounded four places past the decimal) or 94%.

	109,703.00	
Legal Fees	\$ 1,053.00	<1%
Supplies	\$ 298,092.00	10%
Telephone	\$ 8,183.00	<1%
Postage & Shipping	\$ 859.00	<1%
Occupancy	\$ 83,919.00	3%
Equipment Rental & Maintenance	\$ 23,169.00	1%
Travel	\$ 1,318.00	<1%
Conferences, Conventions & Meetings	\$ 391.00	<1%
Depreciation, Depletion, etc.	\$ 63,787.00	2%
Contracted Services	\$ 37,138.00	1%
Insurance	\$ 56,881.00	2%
Unspecified Other	\$ 97,362.00	3%
Total Program Expenses	\$ 2,556,323.00	85%
Management & General Expenses		
Compensation of Officers, Directors, Etc.	\$ 0.00	<1%
Other Salaries & Wages	\$ 267,290.00	9%
Pension Plan Contributions	\$ 2,100.00	<1%
Other Employee Benefits	\$ 43,752.00	1%
Payroll Taxes	\$ 19,359.00	1%
Legal Fees	\$ 186.00	<1%
Supplies	\$ 52,604.00	2%
Telephone	\$	<1%

	1,444.00	
Postage & Shipping	\$ 152.00	<1%
Occupancy	\$ 14,809.00	<1%
Equipment Rental & Maintenance	\$ 4,089.00	<1%
Travel	\$ 233.00	<1%
Conferences, Conventions & Meetings	\$ 69.00	<1%
Depreciation, Depletion, etc.	\$ 11,256.00	<1%
Contracted Services	\$ 6,553.00	<1%
Insurance	\$ 10,038.00	<1%
Unspecified Other	\$ 17,181.00	<1%
Total Management & General	\$ 451,115.00	15%
Total Expenses (Program Expenses + Management & General)	\$ 3,007,	100%
Reconciliation		
Total Revenues	\$ 3,305,758.00	
Total Expenses	-\$ 3,007,438.00	
Net Income	\$ 298,320.00	

Applicant Ex. No. 11.

D. DESCRIPTION OF FACILITIES AND USE ISSUES

10. Applicant's facility is commonly known as the "Lena Continental Manor," (the "Manor"), a licensed rehabilitational nursing home for the elderly. Applicant Ex. Nos. 2, 16.

11. The Manor has maximum residential capacity of 92 beds, all of which are approved for Medicaid recipients. Applicant Ex. Nos. 13, 16; Tr. pp. 98-99.
12. Some, but not all, of all of the 92 beds were occupied by Medicaid recipients during 2001. Tr. pp. 98-99.⁴
13. All Manor residents receive services and/or care pursuant to the terms of a form contract which contains the following relevant terms and conditions:
- A. The Manor agrees to furnish such personal care, room, board, laundry and basic nursing care, as may be required for the health, safety, good grooming and well-being of the resident;
 - B. All expenses associated with medical care provided by the resident's personal physician, or a physician that treats the resident pursuant to a referral issued by the Manor's management, shall be borne by the resident;
 - C. The Manor's management will arrange for transfer of the resident to the hospital of his/her choice, when ordered to do so by the attending physician;
 - D. Management will reserve the resident's bed during hospital confinement, at the full monthly rate⁵ then applicable, unless the resident or a responsible party duly authorized to act on the resident's behalf expressly directs management not to reserve the bed;

4. The applicant devoted a substantial portion of its evidence to Medicaid-related issues. I shall discuss this evidence, and its implications for the outcome herein, in greater detail *infra*, at pp. 17-19 and 21-27.

5. The contract does not specify the exact amount of this full monthly rate. *See*, Applicant Ex. No. 14.

- E. The Manor's management will attempt to maintain the resident in his or her original room assignment, but reserves the right to change accommodations if conditions warrant;
- F. The Manor will not discharge or transfer the resident from the facility except for: (1) medical reasons; or, (2) the non-payment of charges to the resident, except as such discharge or transfer may be prohibited by Titles 18 and 19 of the Federal Social Security Act;⁶
- G. The resident specifically agrees that he/she will: (1) provide such spending money as may be necessary for personal well being; (2) provide such clothing and personal effects as is needed and desired; (3) abide by all rules and regulations established in connection with the operation and maintenance of the facility; (4) not bring any foodstuffs or medication into the facility without first obtaining appropriate permission from the facility's management; (5) be responsible for all hospitalization charges, in the event that the resident should require hospitalization, as well as the cost(s) of any laboratory work or x-ray studies ordered by the attending physician; (6) be responsible for physician fees that the resident may incur for medical treatment(s) administered during his/her stay at the facility; (7) be responsible for all prescription charges as rendered through the facility's pharmacy consultant; and, (8) be responsible for repairing or replacing property belonging to the facility or another of its residents that the resident damages or destroys;

6. I shall discuss these provisions, found at 42 U.S.C.A §1395i-3(c)(2)(A) and 42 U.S.C.A §1396r, and their implications for the outcome of this case, *infra* at pp. 23-27.

- H. The resident shall pay, at the time of signing the contract, a specified sum certain as a deposit to ensure 30 days of care at the daily rate specified in the contract;⁷
- I. The resident shall also pay the full monthly charge, at the daily rate, “in advance on or before the tenth day of each month.” Any accounts not so paid in full will be considered past due and subject to an interest charge of 1.5% per month or 18% per year until paid in full;
- J. Mailed remittances will not be considered timely unless they are postmarked on or before the second day prior to the due date;
- K. The failure of the Manor’s management to exercise or use any of its rights or privileges granted under the contract shall not be deemed as a waiver of such rights or privileges or as a prohibition against the use of such rights and privileges thereafter; and,
- L. The resident shall pay all reasonable attorneys fees and costs incurred by the Manor in enforcing the terms and provisions of this contract, including the collection of any amounts due to the Manor, or in defending any proceeding to which the facility is made a party defendant as a result of the acts or omissions of the resident, his or her guarantor and/or a responsible party acting on the resident’s behalf.

Applicant Ex. No. 14.

CONCLUSIONS OF LAW:

7. The sample contract (Applicant Ex. No. 14) did not indicate the exact amount of the deposit. Nor did it contain any information indicating what specific daily rate the resident would be

I. CONSTITUTIONAL AND STATUTORY CONSIDERATIONS

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Pursuant to Constitutional authority, the General Assembly enacted Sections 15-65(a) and 15-65(c) of the Property Tax Code (35 **ILCS** 200/1-1, *et seq.*) which, in relevant part, provide for exemption of the following:

200/15-65. Charitable purposes

15-65. Charitable purposes. All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

(a) Institutions of public charity.

(c) old people's homes, facilities for persons with a developmental disability, and not-for-profit organizations providing services or facilities related to the goals of educational, social and physical development, if, upon making application for the exemption the applicant provides affirmative evidence that the home or facility or organization is an exempt organization under paragraph (3) of Section 501(c) of the Internal Revenue Code [26 U.S.C.A. Section 501] or its successor, and either: (i) the bylaws of the home or facility or not-for-profit organization provide for a waiver or reduction, based on an individual's ability to pay, of any entrance fee, assignment of assets, or fee for services, or, (ii) the home or facility is qualified, built, or financed under Section 202 of the National Housing Act of 1959, [12 U.S.C.A. Section 1701 *et seq.*] as amended.

charged. It did, however, contain blank lines into which these amounts could be written by hand. *See*, Applicant Ex. No. 14.

35 ILCS 200/15-65(a), (c).

II. THE BURDEN OF PROOF AND RELATED CONSIDERATIONS

Property tax exemptions are inherently injurious to public funds because they impose lost revenue costs on taxing bodies and the overall tax base. In order to minimize the harmful effects of such lost revenue costs, and thereby preserve the Constitutional and statutory limitations that protect the tax base, Sections 15-65(a) and 15-65(c) are, like all other statutes, to be strictly construed in favor of taxation, with all doubts and debatable questions resolved against the applicant. People Ex Rel. Nordland v. the applicant of the Winnebago Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Furthermore, the applicant bears the burden of proving that the property it is seeking to exempt falls within the appropriate statutory provision by a standard of clear and convincing evidence. *Id.*

The clear and convincing standard is met when the evidence is more than a preponderance but does not quite approach the degree of proof necessary to convict a person of a criminal offense. Bazydlo v. Volant, 264 Ill. App.3d 105, 108 (3rd Dist. 1994). Thus, “clear and convincing evidence is defined as the quantum of proof which leaves no reasonable doubt in the mind of the fact finder as to the veracity of the proposition in question.” In the Matter of Jones, 285 Ill. App.3d 8, 13 (3rd Dist. 1996); In re Israel, 278 Ill. App.3d 24, 35 (2nd Dist. 1996); In re the Estate of Weaver, 75 Ill. App.2d 227, 229 (4th Dist. 1966).

III. SUBSTANTIVE ISSUES

A. The “Charitable” Exemption

An entity seeking to exempt real estate under Section 15-65(a) must prove that the property in question is: (1) owned by a duly qualified “institution of public charity;” and, (2) actually and exclusively used for “charitable purposes;” and, (3) not leased or otherwise used with a view to profit. 35 ILCS 200/15-65(a); Methodist Old People’s Home v. Korzen, 39 Ill.2d 149 (1968).

1. Lack of Exempt Ownership

By definition, an “institution of public charity” operates to benefit an indefinite number of people in a manner that persuades them to an educational or religious conviction that benefits their general welfare or otherwise reduce the burdens of government. Crerar v. Williams, 145 Ill. 625 (1893). It also: (1) has no capital stock or shareholders; (2) earns no profits or dividends, but rather, derives its funds mainly from public and private charity and holds such funds in trust for the objects and purposes expressed in its charter; (3) dispenses charity to all who need and apply for it; (4) does not provide gain or profit in a private sense to any person connected with it; and, (5) does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses. Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156, 157 (1968).

These factors are not to be applied mechanically or technically. DuPage County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 466 (2nd Dist. 1995). Rather, they are to be balanced with an overall focus on whether, and to what extent, applicant: (1) primarily serves non-exempt interests, such as those of its own dues-paying members (Rogers Park Post No. 108 v. Brenza, 8 Ill.2d 286 (1956); Morton Temple Association v. Department of Revenue, 158 Ill. App. 3d 794,

796 (3rd Dist. 1987)); or, (2) operates primarily in the public interest and lessens the State's burden. (DuPage County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations, *supra*); Randolph Street Gallery v. Department of Revenue, 315 Ill. App.3d 1060 (1st Dist. 2000)).

The first step in determining whether the applicant qualifies as an “institution of public charity” is to examine the language of its organizational documents. Morton Temple Association v. Department of Revenue, 158 Ill. App. 3d 794, 796 (3rd Dist. 1987). This applicant’s articles of incorporation and by-laws recite, *inter alia*, that it is organized to operate for charitable, educational and scientific purposes consistent with Section 501(c)(3) of the Internal Revenue Code. Applicant Ex. Nos. 3, 4. However, mere statements of the agents of an institution and the wording of its governing documents evidencing an intention to engage in exclusively charitable activity do not relieve such an institution of the burden of proving that it actually and factually engages in such activity. *Id.* Therefore, “it is necessary to analyze the activities of the [applicant] in order to determine whether it is a charitable organization as it purports to be in its charter.” *Id.*

All of this applicant’s activities, including of its spending limitations, its mission statements and the selection and removal of those who sit on its governing board, are subject to the direction and control of a separately incorporated entity, Freeport. Applicant Ex. No. 4. Freeport, however, is neither the applicant in this case nor the nominal titleholder of the subject property.

In cases where a separately incorporated entity effectively controls the operations of the entity that is both the nominal titleholder and the applicant in a particular case, our courts have determined exempt ownership according to whether the controlling entity

qualifies for exempt status. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944) (property nominally owned by an entity whose operations were effectively controlled by the University of Illinois held tax exempt); Southern Illinois University Foundation v. Booker, 98 Ill. App.3d 1062 (5th District, 1981) (similar result with respect to property nominally owned by an entity whose operations were effectively controlled by the Southern Illinois University).

This particular record does not contain sufficient evidence to prove that the controlling entity, Freeport, qualifies for exempt status under Section 15-65(a). Specifically, the record does not contain any financial statements pertaining to Freeport itself. Absent such statements, I am unable to discern whether Freeport's financial structure conforms to that of an "institution of public charity."

Nor does the record contain any form of evidence disclosing the manner in which Freeport actually conducts its daily business operations. Once again, it is the underlying business reality of Freeport's actual operations, and not the way that those operations are described in Freeport's organizational documents, that is ultimately decisive for present purposes. Morton Temple Association, *supra*. Therefore, those organizational documents (Applicant Ex. No. 6,7), standing alone, are legally insufficient to prove that Freeport qualifies for exempt status.

The determination confirming Freeport's tax exempt status under Section 501(c)(3) of the Internal Revenue Code (Applicant Ex. No. 8) is likewise legally insufficient because that provision of the Internal Revenue Code does not govern the outcome herein. In re Application of Clark v. Marion Park, Inc., 80 Ill. App.3d 1010, 1012-13 (2nd Dist. 1980); People ex rel. County Collector v. Hopedale Medical

Foundation, 46 Ill.2d 450 (1970). Instead, it is Sections 15-65(a) and (c) of the Property Tax Code that provide the controlling provisions in this case. Because the applicant did not present sufficient evidence to prove that Freeport qualifies as a tax exempt entity for purposes of Section 15-65, it failed to sustain its burden of proof with respect to the exempt ownership requirement contained therein.

Many of the evidentiary deficiencies identified above do not pertain to the applicant itself, as the record contains much evidence, which I shall discuss below, relative to the applicant's own financial structure and the details of its daily business operations. Nevertheless, that evidence fails to establish that the applicant itself qualifies as an "institution of public charity" within the meaning of Section 15-65(a). Therefore, the subject property would not be in exempt ownership even if Freeport did not effectively control the applicant's operations.

According to its organizational documents, the applicant is organized for purposes of operating nursing homes that provide care to the elderly consistent with policies that waive or reduce service fees or other financial obligations consistent with an individual's ability to pay. Applicant Ex. Nos. 3, 4. However, these organizational documents merely authorize the applicant to adopt such policies. As such, they do not, *ipso facto*, prove that the applicant, in fact, dispensed any tangible forms of "charity" by actually waiving or reducing fees for those who received services at the subject property.

More importantly, the provisions in question do not require the applicant to devote any specifically identifiable portion of its resources to fee waivers or other endeavors that actually effectuate dispensation of "charity." Indeed, these provisions clearly state that the granting of any such waivers is expressly subject to, and must be

consistent with, “the financial resources of the corporation.” Applicant Ex. Nos. 3, 4. Therefore, at minimum, there exists substantial speculation as to whether the applicant does, in fact, devote any of its resources to “charitable” endeavors. Wyndemere Retirement Community v. Department of Revenue, 274 Ill. App.3d 455 (2nd Dist. 1995).

Moreover, whatever portion of its resources the applicant devotes to providing care for those who receive Medicaid benefits does not constitute dispensation of “charity” within the meaning of Illinois law. The applicant provides care to Medicaid patients pursuant to the terms of contracts that it negotiates at arm’s length. These contracts provide the applicant with the benefit of guaranteed payments, albeit at rates that are lower than those it might otherwise obtain, in exchange for the services that it provides. Nevertheless, such payments do provide the applicant with a guaranteed revenue stream it would not receive if its governing board elected not to accept Medicaid. Therefore, any services that the applicant provides, or financial losses that it incurs, while fulfilling its obligations under such Medicaid contracts do not constitute acts of “charity” because they stem from exercises of that board’s business judgment. *Accord*, Riverside Medical Center v. Department of Revenue, et al., 342 Ill. App.3d 603, 609-610. (3rd Dist., 2003).

This is especially true in this case, where the applicant relies almost entirely on one source of revenue, patient fees, to fund its operations. Indeed, because the applicant derives 96% of its total operating revenue from patient fees, the business decisions that its management makes must, by reason of economic necessity, be directed toward maximizing the revenue stream that it derives from such fees.

Moreover, practical considerations associated with caring for an elderly and infirm population dictate that this revenue stream will fluctuate according to whether the

applicant's actual census is high or low relative to its overall capacity of 92 beds. If that census is high, then there will be less revenue gaps in the applicant's revenue stream as compared to situations where that census is relatively low. Nevertheless, the narrower revenue gaps that accompany the higher occupancy rates do, in practical terms, afford applicant's management considerably more leeway in determining whether any beds that remain vacant should be filled with patients who can afford to pay full fees or patients who receive discounted care, whether through Medicaid or otherwise.

To the extent that management elects to fill any or all of these remaining vacancies with patients receiving discounted care, then management receives the benefit of guaranteed payments in exchange for the services that it provides. Riverside Medical Center, *supra*. To the extent it does not, then management receives the benefit of revenue enhancements associated with providing care to those who can afford to pay fee rates which are markedly higher than those applicant would receive by providing discounted care.

From an economic perspective, the applicant's capacity to receive such enhancements acts as a disincentive for it to provide discounted care in any form, especially when it has the option of filling a relatively small number of vacancies with private pay clients. If, however, the number of vacancies is high, or the Manor's census is low relative to its overall capacity, then economic necessity dictates that applicant's management must fill these vacancies as quickly as possible in order to maintain the level of patient service revenues that it requires to sustain its operations. As such, management's decision to accept patients receiving Medicaid or other forms of guaranteed, discounted insurance payments in circumstances where its census is low probably has more to do with filling the revenue gaps that arise during periods of high vacancy than it does with its desire to dispense "charity." Riverside Medical Center, supra.

This record does not disclose whether the applicant's actual census was high or low relative to its overall capacity throughout the tax year in question, 2001. Despite this, the ultimate fact remains that because the applicant depends almost entirely on patient service revenues to fund its operations, its management must make business decisions that are patently inconsistent with dispensation of "charity" in order to ensure that its operations will continue to remain financially viable. Consequently, applicant's financial structure, as described in the federal return admitted as Applicant Ex. No. 11, simply does not permit it to function as an "institution of public charity." Therefore, the portion of the Department's determination finding that the subject property is not in exempt ownership, as required by 35 ILCS 200/15-65(a), should be affirmed.

The fact that applicant's federal return for 2002 (Applicant Ex. No. 12) shows a net loss of \$76,406.00 does not alter this conclusion. It is well established that each year constitutes a separate cause of action for exemption purposes. People ex rel. Tomlin v. Illinois State Bar Ass'n, 89 Ill. App.3d 1005, 1013 (4th Dist. 1980); Jackson Park Yacht Club v. Department of Local Government Affairs, 93 Ill. App.3d 542 (1st Dist. 1981); Fairview Haven v. Department of Revenue, 153 Ill. App.3d 763 (4th Dist. 1987). Consequently, the one and only state of affairs that is relevant to this proceeding is the one that transpired between January 1, 2001 and December 31, 2001.⁸ Therefore, evidence pertaining to the applicant's financial structure for tax years other than the one currently at issue, 2001, is technically irrelevant herein.

Even if this were not true, the mere fact that applicant's federal returns reflect profits or losses that can be measured in quantifiable accounting terms is not determinative for present purposes. Children's Development Center, Inc. v. Olson, 52 Ill.2d 332 (1972). Rather, the determinative considerations herein are the manner in which the underlying economics of applicant's financial structure and the business realities associated therewith combine to render it all but factually impossible for the applicant to operate as an "institution of public charity." Morton Temple Association v. Department of Revenue, *supra*; Riverside Medical Center, *supra*.

Applicant derived \$3,212,843.00, or 99%, of the \$3,219,570 in total revenues shown its 2002 federal return (Applicant Ex. No. 12) from program services revenues, which, in turn, consist mostly of patient fee payments. Consequently, there were no substantial changes in either the underlying economics of applicant's financial structure

8. Section 1-155 of the Property Tax Code defines the term "year" for Property Tax purposes as meaning a calendar year. 35 ILCS 200/1-155.

or the business realities associated therewith between 2001 and 2002. Therefore, the fact that applicant's federal return for 2002 reflected a deficit in the difference between its total revenues and its expenses, while its return for 2001 (Applicant Ex. No. 11) indicated a surplus in revenues over expenses, is of no legal significance herein.

2. Lack of Exempt Use

The word "exclusively," when used in Section 15-65 and other property tax exemption statutes means "the primary purpose for which property is used and not any secondary or incidental purpose." Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993). In analyzing whether property satisfies the "exclusive" use requirement, it is appropriate to compare the relative extent to which the property is used for taxable and tax exempt purposes. Metropolitan Water Reclamation District of Greater Chicago v. Illinois Department of Revenue, 313 Ill.App.3d 463 (1st Dist. 2000), *leave to appeal denied*, October 4, 2000.

This record does not permit me to make such a comparison for several reasons. First, providing care to Medicaid recipients does not constitute dispensation of "charity" for the reasons set forth above. However, even if it did, this record fails to accurately disclose what portion of the applicant's actual census for the tax year 2001, actually received Medicaid benefits. Three of the applicant's witnesses, Florence Chapin, Gary Price, and Lynn Mary Ann Lyvers, estimated that population to be between 25 and 30 (Tr. pp. 68-69, 86, 113), while another witness, Jack Kaufman, indicated that applicant's Medicaid population for 2001 was "approximately 22." (Tr. p. 78).

Estimates and approximations, from whatever source, are generally much too indefinite to constitute the type of clear and convincing evidence that is necessary to

prove that the subject property was, in fact, “exclusively” or primarily used for charitable purposes,” as required by Section 15-65 of the Property Tax Code. This is especially true in this case because Ms. Livers specifically testified that Mr. Kaufman’s estimate was “not accurate” (Tr. p. 113) and all of the estimates and approximations derived through the testimonial evidence are patently inconsistent with the list of Medicaid recipients admitted as part of Applicant Ex. No. 19, which names only 10 Medicaid patients as having received care at the Manor during 2001.

These inconsistencies make it very difficult to accurately determine the true extent of applicant’s Medicaid population for 2001. It is also difficult to correctly analyze whether any Medicaid population that applicant may have had during 2001 constituted the primary component of its overall census or only an incidental portion. The record is totally devoid of any evidence proving, by patient headcount or otherwise, the Manor’s actual total patient census for 2001.

This census would have been subject to the types of periodic fluctuations that arise from risks inherent in providing care to the elderly and infirm, such as death or the transfer of patients to hospices, hospitals or other medical facilities that provide other necessary services the applicant is not authorized to offer. Consequently, it is reasonable to assume that the applicant might have experienced these fluctuations irrespective of whether it accepted Medicaid patients during 2001. Therefore, the mere fact that the Manor’s census was subject to such fluctuations does not reveal anything about the extent to which it was used for “charitable” purposes in 2001.

Nor do the facts that the Manor has maximum capacity of 92 beds, and that all 92 beds are approved for use by patients who receive Medicaid benefits, reveal such information. Actual, and not intended use, is decisive for exemption purposes. Skil Corp. v. Korzen, 32 Ill.2d 249 (1965); Comprehensive Training and Dev. Corp. v. County of Jackson, 261 Ill. App.3d 37 (5th Dist. 1994). Because maximum capacity, by its very nature, pertains only to intended use, the most applicant has proven is that it intended to provide 92 patients receiving Medicaid benefits with care at the Manor during 2001.

Even if this were not true, and the applicant had provided more accurate evidence concerning the number of Medicaid patients that received care at the Manor during 2001, I cannot accurately evaluate the impact of whatever Medicaid population the Manor may have had on its overall, actual use in 2001 without some evidence that establishes its census for that year. Although this census was subject to some variance, at the very least, an average daily census that accounted for such fluctuations might have enabled me to measure that impact in its proper analytic context, which is the ratio of Medicaid patients who actually received care at the Manor during 2001 to the Manor's actual, average daily census for that year. *Accord*, Metropolitan Water Reclamation District of Greater Chicago v. Illinois Department of Revenue, *supra*. Because the applicant failed to provide pertinent information, and the overall evidence pertaining to the Manor's Medicaid population was inconclusive at best, the applicant has failed to prove its central contention in this case, which is that its allegedly significant Medicaid population provides evidence of the requisite exempt use.

The applicant also did not cite, and my research fails to disclose, the existence of any authority supporting its secondary contention herein, which pertains to the contract provisions relative to eviction. These provisions state that the applicant will not evict any resident from the Manor for any reason “except[:.]” (1) if the applicant’s medical condition warrants that they be evicted; or, (2) “the non-payment of charges to the resident, except [where such discharge] is prohibited by Title 18 and 19 of the Federal Social Security Act.” Applicant Ex. No. 14.

The provisions of Titles 18 and 19 of the Social Security Act that pertain to discharge or transfer from Medicaid-qualified skilled nursing homes, such as the Manor, are found in 42 USCA §1395i-3(c) and 42 USCA §1396r(c), which state the following:

42 USCA §1395i-3(c)

(2) Transfer and discharge rights

(A) In general

A skilled nursing facility must permit each resident to remain in the facility and must not transfer or discharge the resident from the facility unless--

- (i) the transfer or discharge is necessary to meet the resident's welfare and the resident's welfare cannot be met in the facility;
- (ii) the transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;
- (iii) the safety of individuals in the facility is endangered;
- (iv) the health of individuals in the facility would otherwise be endangered;

- (v) the resident has failed, after reasonable and appropriate notice, to pay (or to have paid under this subchapter or subchapter XIX of this chapter on the resident's behalf) for a stay at the facility; or
- (vi) the facility ceases to operate.

In each of the cases described in clauses (i) through (v), the basis for the transfer or discharge must be documented in the resident's clinical record. In the cases described in clauses (i) and (ii), the documentation must be made by the resident's physician, and in the cases described in clauses (iii) and (iv) the documentation must be made by a physician.

42 USCA §1395i-3(c)

42 USCA §1396r(c)

(2) Transfer and discharge rights

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- (i) the transfer or discharge is necessary to meet the resident's welfare and the resident's welfare cannot be met in the facility;
- (ii) the transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;
- (iii) the safety of individuals in the facility is endangered;
- (iv) the health of individuals in the facility would otherwise be endangered;
- (v) the resident has failed, after reasonable and appropriate notice, to pay (or to have paid under this subchapter or subchapter XVIII of this chapter on the resident's behalf) for a stay at the facility; or

(vi) the facility ceases to operate.

In each of the cases described in clauses (i) through (iv), the basis for the transfer or discharge must be documented in the resident's clinical record. In the cases described in clauses (i) and (ii), the documentation must be made by the resident's physician, and in the case described in clause (iv) the documentation must be made by a physician. For purposes of clause (v), in the case of a resident who becomes eligible for assistance under this subchapter after admission to the facility, only charges which may be imposed under this subchapter shall be considered to be allowable.

42 USCA §1396r(c)

Neither of these provisions contains any language that forbids a Medicaid-qualified skilled nursing home from evicting one of its patients for failure to pay charges when due. Instead, they merely require that the facility give the patient “reasonable and appropriate notice” that the patient *will be* evicted if the patient does not pay any delinquent charges in a timely manner. 42 USCA §1395i-3(c)(2)(A)(ii); 42 USCA §1396r(c)(2)(A)(ii). Consequently, the Manor is not under any affirmative legal duty to refrain from evicting any resident who fails to make required fee payments when due merely because it is subject to these provisions.

Even if it did, public policy strongly dictates against providing the Manor or any other skilled nursing home that is subject to these provisions with the economic advantage of tax-exempt status simply because it complies with the legal standards that govern the conduct of its business affairs. Indeed, if property tax exemptions were to be awarded based on compliance with the legal requirements of a governmentally ordained program such as Medicaid, the imposition of lost revenue costs on taxing bodies and the overall tax base would be significant.

Illinois law currently does not condone the awarding of property tax exemptions on such a simplistic basis. Rather, as a matter of state constitutional law, property tax

exemptions are awarded only to the limited classed of properties that are owned and used in the manner prescribed by the appropriate exemption statute. Illinois Const. 1970, Art IX, § 6.

For present purposes, that statute is found in Section 15-65(a) of the Property Tax Code, 35 **ILCS** 200/15-65(a), and requires, in relevant part, a suitable level of proof that the Manor's services are, in fact, available to all persons irrespective of their ability to pay. Methodist Old People's Home v. Korzen, *supra*; Small v. Pangle, 60 Ill.2d 510, 518 (1975). The fact that federal statutes require applicant to adhere to certain notice requirements prior to evicting any of its Medicaid residents from the Manor does not prove that its services are so available for the reasons set forth above. Furthermore, because the contract which governs the terms and conditions of each resident's stay at the Manor expressly authorizes evictions for non-payment,⁹ there arises a legitimate, yet unresolved question of fact as to whether the Manor's services are, in fact, available to anyone except those who can afford to pay for them.

The Manor's administrator, Lynn Mary Ann Lyvers, testified that the applicant does not evict anyone. Tr. pp. 99-100. This testimony, although probative, does not rise to the level of clear and convincing evidence that is necessary to sustain applicant's burden of proof in the absence of appropriate supporting documentation. If it did rise to this level, then any entity could obtain a property tax exemption, and thereby visit deleterious lost revenue costs on public treasuries, simply by presenting nothing more than testimony that, irrespective of credibility, does nothing more than serve its own interest. However, even if I accepted Ms. Lyvers' testimony at face value, the ultimate facts remain that: (1) the applicant retains contractual authority to evict residents who fail

to pay; and, (2) the applicant is under no affirmative legal duty to desist from exercising that authority against such residents. Therefore, at the very least, the totality of the evidence on this point raises doubts as to whether the Manor's eviction policies are, in fact, as "charitable" as they are described in Ms. Lyvers' testimony.

This and all other doubts that arise in property exemption cases must be resolved in favor of taxation as a matter of law. People Ex Rel. Nordland v. the applicant of the Winnebago Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). However, irrespective of the evidentiary deficiencies and/or conflicts that create such doubts herein, the residential services contract (Applicant Ex. No.14) contains other provisions that are patently inconsistent with uses that further the dispensation of "charity."

For instance, the provision that requires residents of the Manor to pay interest on any delinquent charges is, in effect, a penalty for non-payment that lacks "the warmth and spontaneity" characteristic of charitable endeavors. Methodist Old People's Home v. Korzen, *supra*. In addition, the provisions requiring the resident to pay a sum certain as a deposit at the time he or she signs the residential services contract is, in the absence of language waiving that deposit for those who cannot afford to pay, inconsistent with dispensation of "charity" because it effectively bars such persons from being accepted for residency at the Manor. *Accord*, People ex. rel. Nordlund v. Ass'n. for the Winnebago Home for the Aged, 40 Ill.2d 91, 97 (1968).

Finally, the language authorizing the applicant to change a resident's accommodations "if conditions warrant" is vague in the sense that it fails to accurately identify the precise nature of any conditions that give rise to such a transfer.

9. See, Applicant Ex. No. 14.

Consequently, there exist a number of unresolved questions concerning the extent to which the applicant makes transfers based on financially related considerations, such as whether the quality of a resident's accommodations varies according to the resident's ability to pay for the accommodations they receive. Once again, all such unresolved questions must be resolved in favor of taxation. People Ex Rel. Nordland v. the applicant of the Winnebago Home for the Aged, *supra*; Gas Research Institute v. Department of Revenue, *supra*.

C. Exemption Under Section 15-65(c)

Section 15-65(c) of the Property Tax Code, 35 ILCS 200/15-65(c) provides for the exemption of properties that are “exclusively” used for “charitable” purposes and owned by the following entities:

(c) old people's homes, facilities for persons with a developmental disability, and not-for-profit organizations providing services or facilities related to the goals of educational, social and physical development, if, upon making application for the exemption the applicant provides affirmative evidence that the home or facility or organization is an exempt organization under paragraph (3) of Section 501(c) of the Internal Revenue Code [26 U.S.C.A. Section 501] or its successor, and either: (i) the bylaws of the home or facility or not-for-profit organization provide for a waiver or reduction, based on an individual's ability to pay, of any entrance fee, assignment of assets, or fee for services, or, (ii) the home or facility is qualified, built, or financed under Section 202 of the National Housing Act of 1959, [12 U.S.C.A. Section 1701 *et seq.*] as amended.

35 ILCS 200/15-65 (c).

This particular subject property is the type of old people's home that may be subject to exemption under Section 15-65(c) if used for appropriate purposes. In Eden Retirement Center, Inc. v. Department of Revenue, Docket No. 97703, issued December

2, 2004, the Illinois Supreme Court held that an exemption for a nursing home must be decided on a case-by-case basis including a determination of whether the nursing home is operated exclusively for charitable purposes. The preceding analysis has identified a number of factors establishing that the subject property was not, in fact, “exclusively” or primarily used for purposes that qualify as “charitable” under Illinois law during the tax year currently in question, 2001. Therefore, the portion of the Department’s initial determination finding that the subject property does not qualify for exemption from 2001 real estate taxes under 35 ILCS 200/15-65(c) should be affirmed.

IV. FINAL CONSIDERATIONS

The applicant devoted much of its presentation to proofs indicating that those who would avail themselves of the applicant’s services were aware that the Manor accepted Medicaid patients. Tr. pp. 67-70, 77-79, 85. Although the applicant must establish appropriate community awareness as part of its burden of proof, (Highland Park Hospital v. Department of Revenue, 155 Ill. App.3d 272, 280-281, (2d Dist. 1987); Alivio Medical Center v. Department of Revenue, 299 Ill. App.3d 647, 652 (1st Dist. 1998); Riverside Medical Center v. Department of Revenue, 342 Ill. App.3d 603 (3rd Dist. 2003)), this exemption application does not fail due to lack of community awareness. Rather, it fails on other grounds, namely that: (1) the business reality of applicant’s operations are patently inconsistent with those of an “institution of public charity[;]” (2) the record fails to clearly and convincingly prove that the Manor was “exclusively” or primarily used for purposes that qualify as “charitable” within the meaning of Illinois law; and, (3) merely accepting patients who receive Medicaid or other forms of governmental assistance does not constitute dispensation of “charity.”

If the Illinois law were otherwise, then any facility that provides care to patients receiving any form of governmental assistance could obtain a property tax exemption simply by proving that it accepts patients receiving such assistance and conducts its business affairs according to the statutory or other legal requirements that govern their care. This, in turn, would effectively alleviate both the constitutional and statutory exempt use requirements, which mandate that the applicant clearly and convincingly prove that the subject property is “exclusively” or primarily used for purposes that qualify as “charitable.” Illinois Const. 1970, Art IX, § 6; 35 **ILCS** 200/15-65; Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993).

This applicant did not satisfy its evidentiary burden with respect to the exempt use requirement. Nor did it prove that the subject property is owned by an entity that qualifies as an “institution of public charity.” Therefore, the Department’s initial determination in this matter should be affirmed.

WHEREFORE, for all the aforementioned reasons, it is my recommendation that real estate identified by Stephenson County Parcel Index Numbers 89-10-12-04-102-001 and 89-10-12-04-101-006 remain on the tax rolls for the entire 2001 assessment year.

Date: 1/25/2005

Alan I. Marcus
Administrative Law Judge